

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: : 08-11153 (MG)  
:   
LEXINGTON PRECISION CORPORATION, : One Bowling Green  
: New York, New York  
Debtor. : July 14, 2008  
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TRANSCRIPT OF MOTION TO AUTHORIZE EMPLOYMENT  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: CHRISTOPHER MARCUS, ESQ.  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153

For the Bondholders: PAUL SILVERSTEIN, ESQ.  
Committee JONATHAN LEVINE, ESQ.  
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1 THE COURT: Lexington Precision Corp., 08-11153,  
2 motion to authorize employment of consulting firms.

3 Counsel, please make your appearances.

4 MR. MARCUS: Good afternoon, Your Honor. Christopher  
5 Marcus of Weil, Gotshal & Manges on behalf of the debtors.

6 THE COURT: Good afternoon, Mr. Marcus.

7 Anyone else like to make an appearance?

8 MR. SILVERSTEIN: I'm sorry, Your Honor, I apologize.  
9 Paul Silverstein of Andrews Kurth for the committee.

10 THE COURT: Thank you, Mr. Silverstein.

11 MR. SILVERSTEIN: With me is John Levine, also of  
12 with my firm.

13 THE COURT: Mr. Marcus.

14 MR. MARCUS: Thank you, Your Honor.

15 As you noted, we're here on Lexington's motion to  
16 employ DeWolf & Goldberg as management consultants.

17 Your Honor, there is no dispute that retention of  
18 DeWolf -- I'll call them "DeWolf" -- is in the best interests  
19 of the estate. They are going to increase productivity, cut  
20 costs, implement problem solving methodologies. They have a  
21 proven track record with this company; the company has employed  
22 them on three prior occasions and they have successfully helped  
23 the company implement cost cutting procedures in all of those  
24 and there's very little risk. DeWolf will basically either  
25 stay in place to insure that the company achieves the

1 reductions in cost that they predict or they will take a hit  
2 from their own salary.

3           So for all of those reasons, Your Honor, we think  
4 that employment of DeWolf is necessary and appropriate and  
5 satisfies the business judgment standard under Section 363.

6           Your Honor, even including the committee's limited  
7 objection there are no objections to the relief requested in  
8 the motion. The committee's objection really deals with  
9 issues, I think, that may or may not arise in the future about  
10 valuation considerations, how the valuations and projections  
11 may or may not be put together. Your Honor, I think the  
12 committee sort of admits this in their limited objection when  
13 they say they're skeptical about what may or may not happen in  
14 the future but, of course, there are no facts about what  
15 exactly or how exactly the debtors will use this employment in  
16 connection with valuation. I don't think anybody knows the  
17 answer to that today so as far as the committee's limited  
18 objection, Your Honor, I don't think that there's a justiciable  
19 issue in connection with that document. As I said, the  
20 retention of DeWolf is in the best interests of the estate,  
21 there are no objections and so to the extent that the committee  
22 wants to introduce language into the order regarding preclusion  
23 of evidence in the future, I think it's inappropriate and I  
24 would ask that Your Honor enter the order in the form that it  
25 is today.

1 I would note for the record -- and I've provided Mr.  
2 Silverstein just a few minutes ago with a revised form of order  
3 against the order that was originally filed. There were no  
4 substantive changes, Your Honor, but we did note in the  
5 recitals the existence of the committee's limited objection of  
6 the debtor's reply and then a decretal paragraph that  
7 objections that are not otherwise resolved are overruled.  
8 Other than that the order remains as it is.

9 THE COURT: Thank you, Mr. Marcus.

10 MR. MARCUS: Thank you, Your Honor.

11 THE COURT: Mr. Silverstein.

12 MR. SILVERSTEIN: Thank you, Your Honor. I'll be  
13 brief.

14 When Mr. Marcus says there's no dispute that DeWolf's  
15 retention is in the best interests of the estate, that's a  
16 little broad because, again, we don't oppose anything -- any  
17 efforts to make the debtor's business better and I think we  
18 made that clear in our limited objection. What we do care  
19 about, however, is that any retention order and any subsequent  
20 fee approval orders, we're concerned that they not have any  
21 preclusive effect on valuation for confirmation purposes.

22 We've proposed some additional language -- let me  
23 just explain very briefly -- we seek clarification that a Court  
24 order which ultimately approves the payment to DeWolf for  
25 services rendered, that is \$426,000.00, does not equate to the

1 Court's acceptance that the debtors will have achieved an  
2 \$807,000.00 yearly savings at the Rock Hill [Ph.] facility or  
3 any kind of finding by the Court for purposes of plan  
4 valuation.

5 THE COURT: Why do you think the result of entering  
6 this order would have the effect that you're suggesting?

7 MR. SILVERSTEIN: Because I think what the debtor  
8 would argue then is the debtor would say Your Honor approved  
9 the payment of \$406,000.00, therefore, if Your Honor approved  
10 \$406,000.00 it must be that they've delivered an \$800,000.00  
11 benefit. So I don't think this is really controversial in  
12 terms of what we care about, although the debtor's reply that  
13 said it's a motion in limine really suggests to us that they  
14 are exactly going to try to do that.

15 I think that the notion of the guaranty in the motion  
16 is illusory, as I think we've pointed out in our papers, and  
17 all we wanted in the order -- may I approach, Your Honor, and  
18 provide Your Honor with a paragraph that we'd like inserted  
19 into the order?

20 THE COURT: Hand it up to my law clerk.

21 MR. SILVERSTEIN: Certainly.

22 [Pause in proceedings.]

23 THE COURT: Go ahead, Mr. Silverstein.

24 MR. SILVERSTEIN: The DeWolf retention motion refers  
25 to a guaranty. DeWolf only guaranties that by the end of its

1 eighteen week engagement they will have provided the debtors  
2 with a plan that if continued properly or if properly executed  
3 over the next twelve months that could result in an \$807,000.00  
4 savings assuming that production levels stay the same. That's  
5 not the same as the debtor's characterization of the impact of  
6 DeWolf's work; they talk about a guaranteed savings, the debtor  
7 will save at least \$807,000.00. As a prophylactic measure, we  
8 do not want an order that could have a preclusive effect or  
9 that could have the effect of a finding by Your Honor that a  
10 payment to DeWolf --

11 THE COURT: What's in the order that the debtor has  
12 submitted that would even hint that there's a preclusive  
13 effect?

14 MR. SILVERSTEIN: It's not in the order, it's in the  
15 application. The application talks about how there's going to  
16 be a payment to DeWolf in exchange for a guaranteed payment and  
17 there's an inference to us -- or there was an inference to us  
18 such that we were concerned that we did not want the Court to  
19 enter an order that did not address this issue. I don't think  
20 it's anymore complicated than that and the language that we've  
21 provided, I think, addresses our concerns. So if it's so  
22 obvious, Your Honor, that it can have no preclusive effect,  
23 that's fine, but the language we've proposed is,  
24 notwithstanding anything in the order to the contrary, the  
25 entry of this order approving the retention of DeWolf --

1 there's a typo -- approving the retention of DeWolf and any  
2 further orders of this Court approving an awarding compensation  
3 to DeWolf shall not constitute (1) a finding by the Court that  
4 the debtors have realized the guarantied savings as defined in  
5 the motion or (2) a finding by the Court with respect to  
6 valuation for plan confirmation purposes. Purely a  
7 prophylactic response and I don't think it should be  
8 objectionable by the debtor. The fact that the debtor responds  
9 and says that the committee is making a motion in limine really  
10 suggests that we are more sensitive to what they're doing than  
11 perhaps the Court is. So all we're asking for is protection on  
12 that point. If it's that clear and that's obvious and the  
13 record establishes it without the additional language, so be it  
14 but we don't think there's any harm in the additional language,  
15 Your Honor.

16 Thank you.

17 THE COURT: Thank you. Mr. Marcus, do you want to be  
18 heard?

19 MR. MARCUS: Yes, Your Honor.

20 I haven't seen this language until just now. I read  
21 the limited objection to be asking for something a little bit  
22 different than this, something a little bit more preclusive.  
23 We're not asking the Court at this time to find that anything  
24 that is or is not included in the valuation or the projections  
25 is appropriate. There's a time and a place for that. I don't

1 think it belongs in this order.

2           There is a finding -- I'm sorry, there's a sentence  
3 here that says, "a finding by the Court that the debtors have  
4 realized the guarantied savings," I'm not really sure that I  
5 can agree to that. I don't know what Your Honor would have to  
6 find in connection with a final fee application regarding  
7 DeWolf. Some time later on down the road if to the extent it's  
8 challenged, then perhaps Your Honor will have to make a finding  
9 that they're entitled to the fee because they've achieved a  
10 guarantied savings but, again, that issue is just simply not  
11 before the Court today.

12           I think that this order does one thing and one thing  
13 only; it says the debtors have exercised their business  
14 judgment in connection with seeking to employ DeWolf to try to  
15 make the company better. It doesn't say Your Honor is not  
16 making a finding that the company will be better or that  
17 anything or is not properly included in valuation. All we're  
18 asking is that it was appropriate, that we spend \$465,000.00 or  
19 will spend \$465,000.00 to make this facility more profitable.  
20 That's all.

21           THE COURT: Thank you, Mr. Marcus.

22           MR. SILVERSTEIN: Your Honor, may I?

23           THE COURT: No. The limited objection of the  
24 creditors committee is overruled. The motion for authorization  
25 to employ DeWolf, Goldberg & Associates is granted.



1 Tell me where we stand with respect to the  
2 evidentiary hearing next Monday.

3 MR. MARCUS: Your Honor, I will do my best. I  
4 probably will have to defer a little bit to Mr. Silverstein.  
5 We have my litigation partner, Adam Stochak, is handling most  
6 of this. I have been otherwise heavily involved in another  
7 matter, The Sharper Image bankruptcy case. So I have seen e-  
8 mails go back and forth. I understand that there are two  
9 depositions that have been scheduled of, I believe, Mr. Mike  
10 Lubin, as well as a representative from W.Y. Campbell. I  
11 believe the committee is going to have a witness at the hearing  
12 and that we are discussing scheduling of depositions of that  
13 witness, document production is ongoing. I did see an e-mail  
14 as I was sitting here that some more information has gone over  
15 to the committee but I am only tangentially involved in that  
16 process.

17 THE COURT: Thank you, Mr. Marcus. Mr. Silverstein.

18 MR. SILVERSTEIN: Thank you, Your Honor.

19 As of now it's on. We may in light of the debtor's  
20 motion to extend exclusivity decide not to go forward but we're  
21 considering that now. We do have two depositions scheduled.

22 THE COURT: When are those depositions because I had  
23 authorized each side to take --

24 MR. SILVERSTEIN: Three hours in total, I think.

25 THE COURT: -- two depositions, three hours each;

1 right.

2 MR. SILVERSTEIN: We're going to do them by video on  
3 Tuesday and Wednesday and in the next few days we're going to  
4 decide whether or not we will withdraw the motion to terminate  
5 and deal with the debtor's motion to extend because that may be  
6 more appropriate. As far as plan negotiations, they haven't  
7 happened.

8 Your Honor, just for clarification on your ruling, is  
9 it clear from the record that the committee's concerns are  
10 without foundation and there is no connection between valuation  
11 and DeWolf and there cannot be an implication? Because that's  
12 all I was looking for.

13 THE COURT: The ruling speaks for itself. I'm  
14 restraining myself because I thought your limited objection was  
15 frivolous. There's nothing in the order that at all suggests  
16 any preclusive effect --

17 MR. SILVERSTEIN: Okay.

18 THE COURT: -- but I'll deal with issues as they  
19 come. I thought it was an absolute waste of time to file this  
20 limited objection.

21 MR. SILVERSTEIN: Oh, again, it didn't take that much  
22 time so --

23 THE COURT: I stand on what I said, Mr. Silverstein.

24 MR. SILVERSTEIN: Thank you.

25 MR. MARCUS: Your Honor, may I hand up the order?

1 THE COURT: Yes, you may.

2 MR. MARCUS: Thank you. To your clerk?

3 THE COURT: Yes, hand it up to my law clerk.

4 Let me just ask -- Mr. Silverstein, I would just say  
5 if you make the decision to withdraw your motion the sooner you  
6 let me know the happier I'll be obviously and you're entitled  
7 to take the deposition -- so you said Tuesday and Wednesday was  
8 the deposition?

9 MR. SILVERSTEIN: Yes, Your Honor.

10 THE COURT: Do you think you'll be in a position to  
11 decide after those depositions?

12 MR. SILVERSTEIN: Yes.

13 THE COURT: All right. Just let us know if you  
14 could.

15 MR. SILVERSTEIN: Thank you, Your Honor.

16 THE COURT: Thank you very much.

17 MR. SILVERSTEIN: We will at the earliest possible  
18 time.

19 THE COURT: Thank you. Let me just ask, Mr. Marcus -  
20 - and I'll ask Mr. Silverstein as well -- Mr. Silverstein  
21 indicates there have been no plan negotiations. There was the  
22 one meeting that took place that was described for the Court, I  
23 think, at the last hearing. Have there been any efforts to set  
24 up any additional meetings?

25 MR. MARCUS: Your Honor, unfortunately, I'm not in a

1 position to answer that. I think most of the communications  
2 between Mr. Silverstein and our firm regarding anything further  
3 post that first meeting have been with Mr. Krasnow.

4 THE COURT: All right.

5 MR. MARCUS: My understanding is that the company is  
6 finishing its projections. We're trying to provide those to  
7 the committee as soon as possible. I'm also not in a position  
8 to tell you what the status is of those and I understand the  
9 committee wants to see those as well.

10 THE COURT: Mr. Silverstein, have there been any  
11 efforts to set up any subsequent meetings, subsequent to that  
12 one -- there has only been the one meeting I take it?

13 MR. SILVERSTEIN: Yes. There have been efforts but  
14 there really can't be because they haven't provided us with  
15 their projections so we don't know what to do.

16 THE COURT: All right. Mr. Marcus, do you know when  
17 the projections are going to be provided?

18 MR. MARCUS: Your Honor, I did speak to the chief  
19 financial officer from Lexington this morning about the 341  
20 meeting that's tomorrow and he indicated to me that he hoped  
21 the projections could be completed some time today or tomorrow.  
22 The way I understand it's working is they are building the  
23 projections bottoms up and each individual facility and  
24 management team is working on those quite diligently and that  
25 that's what has taken more time than they thought that it

1 otherwise was going to take. The indication I got today was as  
2 soon as possible today or tomorrow.

3 THE COURT: All right. Thank you, Mr. Marcus.

4 MR. MARCUS: You're welcome.

5 THE COURT: All right. Thank you, Mr. Silverstein.

6 MR. SILVERSTEIN: Thank you, Your Honor.

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I certify that the foregoing is a transcript from an  
electronic sound recording of the proceedings in the above-  
entitled matter.

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CARLA NUTTER

Dated: July 15, 2008